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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THE SAMUEL A. FULLER &
HATTIE FULLER REVOCABLE
LIVING TRUST,

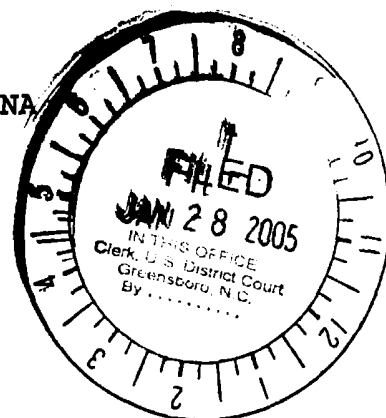
Plaintiff,

v.

HELEN EVANS,

Defendant.

1:05CV00013



ORDER AND RECOMMENDATION OF MAGISTRATE JUDGE ELIASON

Defendant has filed a document entitled, "Notice of Removal," but has not paid the federal filing fees. She has, however, filed a request to proceed in forma pauperis. For a variety of reasons, defendant's request cannot be granted.

Defendant seeks to proceed in forma pauperis. In so doing, the Court must examine the notice of removal petition to see whether this Court has jurisdiction and the removal petition is proper, or whether it is frivolous or malicious. 28 U.S.C. § 1915(e). For frivolous or malicious review, the Court looks to see whether the petition raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

A defendant fails to file a proper petition when it appears certain that the notice of removal fails to show jurisdiction or fails to show that removal is proper. The Court must accept all well-pled allegations and review the petition in a light most

favorable to plaintiff. See Mylan Laboratories, Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993); cert. denied, 510 U.S. 1197, 114 S.Ct. 1307, 127 L.Ed.2d 658 (1994). However, facts must be alleged with specificity. White v. White, 886 F.2d 721 (4th Cir. 1989).

Defendant's "Notice of Removal" is defective for a number of reasons. First, defendant attempts to remove three separate cases from state court to federal court (Nos. 03CVM2275; 04CVM2482; and 04CVD2641 [appeal from 03CVM2275]) into one federal court action. This is not proper; she may only remove one case at a time. See 28 U.S.C. § 1446(b). Therefore, the notice is defective and defendant may not proceed as a pauper.

Second, defendant fails to give any basis for this Court's jurisdiction to receive such state court cases. 28 U.S.C. § 1441. The statute governing removal, 28 U.S.C. § 1446, permits a defendant to remove a civil action from state court to federal court only if there is original jurisdiction in federal court over the action. 28 U.S.C. § 1441. Defendant merely states that she wants to present federal question to the Court. This does not state a basis for removal. A defense based on a federal question is not a basis for removal. Cook v. Georgetown Steel Corp., 770 F.2d 1272 (4th Cir. 1985). She fails to show that the underlying complaint raises federal questions, as she must do.

Also, the "federal questions" which defendant states would be proper for this Court to consider are issues concerning rulings by the magistrates and judges in the state court system. However, there is a doctrine entitled the Rooker-Feldman doctrine.

Basically, it states that lower federal courts may not review state court decisions. Allstate Ins. Co. v. West Virginia State Bar, 233 F.3d 813 (4th Cir. 2000). In fact, a federal court may not review a state court decision on any level. Friedman's Inc. v. Dunlap, 290 F.3d 191 (4th Cir. 2002). It is quite clear that the "federal questions" which defendant wants this Court to litigate deal exclusively with how the state court operates and makes decisions in a case in which defendant is involved. This Court is prevented from entertaining such claims because of the Rooker-Feldman doctrine.

Finally, the removal must be within thirty days of the defendant receiving a copy of the complaint or thirty days from the date the summons was served on the defendant, whichever time is shorter. 28 U.S.C. § 1446(b). Civil Action No. 04CVM2482 was filed on August 24, 2004. Defendant's Notice of Removal is dated December 21, 2004 and Court's Civil Cover Sheet is dated December 22, 2004. The other action was filed in 2003 and, thus, is even more untimely. The failure to timely remove the case constitutes another basis to deny defendant's request to proceed as a pauper.

For the above reasons, the attempted removal of the civil cases which were brought in state court to this Court constitutes a frivolous attempt of removal for which defendant may not be permitted to proceed without the payment of filing fees. On this basis, defendant's request to proceed in forma pauperis must be denied. The removal petition has been filed solely for purposes of ruling on her request to proceed as a pauper, which should be

denied. As such, the state cases have never been removed to this Court. See 28 U.S.C. § 1446(d). (Defendant could not give and has not given notice pursuant to § 1446(d).)

IT IS THEREFORE ORDERED that this action is filed solely for the purpose of filing this order and recommendation.

IT IS RECOMMENDED that defendant's request to proceed in forma pauperis and to remove three civil actions filed in state court to this Court be denied for being frivolous or malicious and that this action be dismissed with the notice of removal being declared to be a nullity and without effect.


United States Magistrate Judge

January 28, 2005